

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA DEPARTMENT OF TRANSPORTATION

In the Matter of the Application of  
Peavey Company-Malt One, 2901  
Fifth Street N.E., Minneapolis,  
Minnesota 55418 for a Vertical  
Clearance Variance Pursuant to  
Minn. Stat. § 219.47 (1996)

FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION

The above-entitled matter came on for hearing before Allan W. Klein, Administrative Law Judge, on Monday, March 17, 1997, in St. Paul. The hearing concluded in less than an hour, and the record closed at the end of the hearing.

Appearing on behalf of Peavey Company, the Applicant herein, was Walker Anderson, WW Constructors, Inc., P.O. Box 231, Hamel, Minnesota 55340. WW Constructors, Inc. is the engineering and construction firm overseeing this project for the Peavey Company.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Transportation will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Bradley J. Larsen, Rail and Motor Carrier Proceedings, Minnesota Department of Transportation, 612/282-2170, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

Has Peavey Company demonstrated that it meets the statutory tests entitling it to a variance from the vertical clearance requirements of Minn. Stat. § 219.46 (1996) for a fall protection system at its Malt-One Terminal?

Based upon all of the files and proceedings herein, the Administrative Law Judge makes the following:

## FINDINGS OF FACT

1. Peavey Company operates a large grain-handling facility, known as Malt-One Terminal, near the northern border of the City of Minneapolis. This facility, which is located at 2901 Fifth Street N.E., consists of a number of large concrete grain bins and associated buildings.

2. Running along the south end of the Main Storage Bin is a track of the Soo Line Railroad. This track runs in a generally east and west direction. At the point where the track is closest to the main storage facility, Peavey has erected a car shed building, directly over the track. The purpose of this car shed is to shelter cars from the elements while they are being loaded and unloaded with grain.

3. The car shed building is made with steel columns supporting a steel roof and steel siding. At both the east and west ends of the car shed building, there are large overhead doors. When these doors are open, to allow a railroad car to come into the building, there is exactly 22 feet of clearance between the door and the rail below it.

4. Cars are moved in and out of the car shed building for loading or unloading by Peavey employees, who are operating a Peavey-owned locomotive. When a car is being loaded, the grain is placed into the car from the top. In order to open the top of the car, it is necessary for a Peavey employee to climb up a ladder located on the north side of the track, at the center of the car shed, and step from a platform at the top of the ladder onto the top of the railroad car. During the winter, cars arriving in the car shed building often have ice or snow on top of them, making it dangerous for an employee to walk on the car top. Peavey desires to lessen the seriousness of injuries from a fall by installing a fall protection system.

5. The proposed fall protection system consists of a stainless steel cable, running from one end of the car shed building to the other. Workers would be required to wear a full-body harness, which has a lanyard and clip attached to it. When a worker desired to walk on top of a car, he would be required to clip his lanyard onto the steel cable. This system would limit his fall to not more than six feet.

6. Peavey seeks to install the fall protection system both because it is required by the Occupational Safety and Health Administration, as well as simply a matter of common sense.

7. The steel cable is supported by a series of brackets which are anchored to the concrete wall of the main storage bin. There are roughly ten brackets which support the cable. The fall protection brackets must be located roughly 18 inches below the bottom of the overhead door when it is in the open position. That means that the cable, which is suspended below the brackets, will be 20', 0" above the track. Since 20' 0" is less than the statutory vertical clearance requirement, Peavey Company is seeking a variance from that requirement.

8. An alternative to seeking the variance would be for Peavey to raise the height of the doors by two feet. However, this would require that the roof and doors be removed, that the supporting columns all be supplemented with extensions, the steel siding would have to be extended, and the existing doors would have to be replaced with longer ones. Peavey estimates that this would cost a minimum of \$95,000.

9. On December 19, 1996, WW Constructors, Inc., on behalf of Peavey, submitted a request for a variance to the Department. On February 14, 1997, the Department served a Notice of Hearing on Peavey, WW Constructors and the Soo Line Railroad. The Notice was also served upon the TCIU; the Warehouse & Helpers of America Affiliated L.B.T., Local 79; the Brotherhood of Maintenance of Way Employees; and, the United Transportation Union. Only the Applicant appeared at the hearing, and its representative stated that he was not aware of any opposition to this proposed variance.

10. The cars are loaded and unloaded on a 24-hour-per-day basis. The area on either end of the car shed building is well lit. The track runs straight for at least 100 feet on either end of the shed building. The Applicant is willing to post appropriate signage to alert persons that there is less than standard vertical clearance. It is also willing to add additional lighting, if required, although it believes that the existing lighting is adequate.

Based upon the foregoing Findings, the Administrative Law Judge makes the following:

### CONCLUSIONS

1. The Department of Transportation has jurisdiction over the subject matter of the hearing.

2. The Department gave proper notice of the hearing and has fulfilled all procedural requirements of law or rule so that the matter is properly before the Administrative Law Judge.

3. Erecting the proposed fall protection system as currently designed will result in a vertical clearance violation in the car shed building.

4. Compliance with the statutory vertical clearance requirement would be unreasonable because it would force the Applicant to either forego the fall protection system or incur unreasonable expense to heighten the building.

5. The vertical encroachment discussed in the Findings will not create a condition unduly hazardous to any person, so long as no-clearance signs conforming to Minn. Rule pt. 8830.9930 (1995) are installed. A post-construction inspection of the signage and the lighting will assure that the Applicant's employees, as well as any Railroad employees, are properly warned of the encroachment.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### RECOMMENDATION

IT IS HEREBY RECOMMENDED: That the Commissioner grant a variance to the Peavey Company from the vertical clearance requirements of Minn. Stat. § 219.46 to allow the construction of a fall protection system at the Company's Malt-One terminal in Minneapolis, all as set forth more fully in the Request for Variance dated December 17, 1996, subject to the requirement that the Applicant erect signs, at either end of the car shed substantially in conformance with Minn. Rule pt. 8830.9930 (1995),

and that after the installation of the fall protection system, there be an inspection of the signage and lighting prior to use of the building.

Dated this \_\_\_\_\_ day of March 1997.

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ALLAN W. KLEIN  
Administrative Law Judge

Reported: Tape Recorded.

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.